

Ordinance No. 122736

Council Bill No. 116268

AN ORDINANCE relating to the Premises Use and Occupancy Agreement between the City of Seattle and the Professional Basketball Club, LLC: approving termination of the Agreement in accordance with the Professional Basketball Club, LLC and City of Seattle Settlement Agreement Memorandum of Understanding; and repealing Ordinance No. 122492.

CF No. \_\_\_\_\_

Date Introduced: <u>7.7.08</u>		
Date 1st Referred:	To: (committee) <u>Full Council</u>	
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage: <u>7-14-08</u>	Full Council Vote: <u>8-0</u>	
Date Presented to Mayor: <u>7-15-08</u>	Date Approved: <u>7-17-08</u>	
Date Returned to City Clerk: <u>7.17.08</u>	Date Published: <u>2</u>	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
Date Vetoed by Mayor:	Date Veto Published:	

# The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: Conlin

Councilmember

## Committee Action:

7-14-08 Passed 8-0 (Excused: Clark)  
As  
Amended

This file is complete and ready for presentation to Full Council. Committee: \_\_\_\_\_  
(initial/date)

*Law Department*

**ORDINANCE** 122736

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WHEREAS, The City brought a lawsuit against the Professional Basketball Club, LLC which currently is pending in Federal District Court, Western District of Washington, under Cause No.C07-1620 MJP; and

WHEREAS, the parties have reached a settlement of that lawsuit; NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. The President of the City Council is authorized to execute the Professional Basketball Club, LLC and City of Seattle Settlement Agreement Memorandum of Understanding dated July 2, 2008. A copy of this agreement is attached as Exhibit A.

Section 2. The Council approves termination, by the Mayor and/or his designee, of the Premises Use and Occupancy Agreement between the City of Seattle and the Professional Basketball Club, LLC in accordance with the Professional Basketball Club, LLC and City of Seattle Settlement Agreement Memorandum of Understanding dated July 2, 2008.

Section 3. Ordinance 122492 is hereby repealed.


Section 4. Any acts pursuant to the authority and prior to the effective date of this ordinance are hereby ratified and confirmed.

Section 5. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

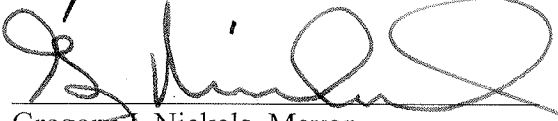
Passed by the City Council the 14<sup>th</sup> day of JULY, 2008 and signed by me in open session in authentication of its passage this 14<sup>th</sup> day of JULY, 2008





  
President \_\_\_\_\_ of the City Council

Approved by me this 17<sup>th</sup> day of July, 2008

  
Gregory J. Nickels, Mayor

Filed by me this 18 day of July, 2008

  
City Clerk

(Seal)

Attachments:

Exhibit A: THE PROFESSIONAL BASKETBALL CLUB, LLC AND CITY OF SEATTLE  
SETTLEMENT AGREEMENT MEMORANDUM OF UNDERSTANDING

Exhibit A

**THE PROFESSIONAL BASKETBALL CLUB, LLC AND CITY OF SEATTLE**  
**SETTLEMENT AGREEMENT MEMORANDUM OF UNDERSTANDING**

This Settlement Agreement Memorandum of Understanding ("MOU") is entered into as of July 2, 2008, by and between The Professional Basketball Club, LLC ("PBC") and the City of Seattle (the "City") in full settlement of the dispute entitled *City of Seattle v. The Professional Basketball Club, LLC*, No. C07-1620MJP currently pending in the United States District Court for the Western District of Washington (the "Lawsuit").

1. Binding Settlement. The parties acknowledge that this MOU, standing alone, is a binding and enforceable contract. Despite the binding nature of this MOU, the parties understand and agree that it will be to their mutual benefit to further define their respective rights and responsibilities in a more detailed Settlement Agreement, but that such Settlement Agreement shall be in all respects consistent with the terms of this MOU. The parties agree to complete the Settlement Agreement no later than August 1, 2008. If the Settlement Agreement is not completed by August 1, 2008, PBC will place funds for the payment required under Paragraph 2 in escrow with an independent escrow agent on terms reasonably acceptable to the parties. The Settlement Agreement will supercede this MOU. Any disputes with respect to the interpretation or enforcement of this MOU will be resolved as provided herein.

2. Initial Payment. Upon full execution of the Settlement Agreement, PBC will pay the City Forty-Five Million Dollars (\$45,000,000), and in exchange, the Premises Use & Occupancy Agreement, dated March 14, 1994, between the City and PBC (as successor-in-interest to SSI Sports, Inc.), as amended (the "Lease") will be deemed terminated as of the date of this MOU; provided that the Lease will be automatically reinstated upon the terms and conditions described in Paragraph 3. The parties agree and acknowledge that this payment is being made by PBC in termination of the Lease and in order for PBC to avoid extended controversy and the expense of litigation and unfavorable publicity and injury to PBC's business reputation. On or prior to the announcement of this MOU, the parties understand that the NBA will issue its previously negotiated statement on the future of professional basketball in Seattle dated July 2, 2008, which the parties agree is a material condition of this Settlement. Upon execution of this MOU, PBC will immediately relocate the franchise to Oklahoma City for the full 2008/2009 and the full 2009/2010 professional basketball seasons, and the parties shall cooperate regarding the removal of personalty, etc., per Lease terms.

The parties understand there is pending litigation between the franchise's former owners and PBC. If, as a result of that litigation, PBC is unable to relocate to Oklahoma City for the full 2008/2009 season or returns to Seattle after locating there for the full 2008/2009 or the full 2009/2010 season, the City will return to PBC Twenty Two Million Five Hundred Thousand Dollars (\$22,500,000) for each such full season that PBC is unable to play its home games in Oklahoma City as a result of pending litigation. Payment would be due within five days of the first home game played in Key Arena in each respective season. Inability to play in Oklahoma City as a result of pending litigation means that PBC has been prevented from relocating to Oklahoma City or required to return to Seattle, or that the sale of the team has been voided, all solely as a result of court order entered as a result of a contested Court proceeding. An order

entered voluntarily by stipulation or otherwise or as a result of an uncontested or unopposed proceeding shall not trigger a return of funds to PBC. Upon final disposition of the pending litigation without affecting PBC's ownership of the franchise or the location in which the franchise is required to play, the City will have no further obligation to return funds to PBC beyond what may already have been paid or is already payable under this MOU.

3. Reinstatement of Lease. If, as a result of pending litigation, PBC is unable to relocate to Oklahoma City or returns to Seattle after relocating there, the Lease will be reinstated and the franchise will play in Key Arena for the 2008/2009 and/or the 2009/2010 seasons under the terms of the Lease, as may be modified by mutual agreement of the parties.

4. Contingent Payment. On the fifth anniversary of the Settlement Agreement, PBC will pay the City a lump sum of Thirty Million Dollars (\$30,000,000) unless one of the following occurs:

A. As a result of pending litigation, PBC is required to play at Key Arena for both the full 2008/2009 and the full 2009/2010 professional basketball seasons or the sale of the team is voided as a result of the pending litigation and the team returns to or stays in Seattle; or

B. By December 31, 2009, legislation has not been enacted by the Washington State Legislature to provide the necessary statutory authority to enable the City or, if necessary, King County to access public monies or public revenues sources sufficient to fund one-quarter of the total cost of the proposed Key Arena renovation (\$75 million escalating at the Seattle area construction cost CPI) which, together with a comparable amount to be provided by the City, completes the public sector component of the Key Arena renovation project budget (\$300 million escalating at the Seattle area construction cost CPI); or

C. By the fifth anniversary of the Settlement Agreement, a qualified prospective owner or current owner of a current or expansion NBA franchise has committed to sign a lease with the City to play substantially all of its regular NBA season home games at a renovated Key Arena and the NBA has provided any and all approvals or consents necessary for such qualified prospective owner or current owner to locate or relocate a current or expansion franchise to Key Arena.

5. Approval of Seattle City Council. Concurrent with the execution of this MOU, the City will deliver a letter signed by not less than a majority of the Seattle City Council expressing their support of this MOU and, on or prior to July 14, 2008, the Seattle City Council will consider an ordinance approving termination of the Lease on the terms described herein. If the Seattle City Council fails to approve such ordinance on or prior to July 14, 2008, then this MOU (other than this Paragraph 5) shall be deemed immediately terminated and, within 24 hours of the failure of the Seattle City Council to approve the ordinance, the parties shall file a stipulated order of dismissal with prejudice in the Lawsuit limited to the claim for specific performance of PBC's obligations under Article II of the Lease and without award of attorney costs or fees. If the Seattle City Council approves the ordinance, then the parties agree to file a stipulated order of dismissal of all claims with prejudice without award of attorney costs or fees concurrently with

execution of the Settlement Agreement and payment to the City of the initial payment required under Paragraph 2.

6. Seattle Sonics/Supersonics Team Name(s), History, Memorabilia, Colors, Intellectual Property Rights. PBC agrees that it will not use the "Seattle Sonics/Supersonics" team name or any logos, symbols, designs, trade dress (including, but not limited to, team colors) or other indicia associated with the Seattle Sonics/Supersonics (the "Intellectual Property") for purposes of identifying its NBA team in game competition, marketing, promotional or other similar purposes following relocation of the team to Oklahoma City, other than as permitted in this paragraph 6. PBC further agrees that if (i) the NBA grants approval for a new NBA team to be located in Seattle and play its games in a renovated Key Arena, (ii) the pending litigation between PBC and the former owners of the Sonics is fully and finally resolved, and (iii) PBC has permanently relocated its NBA team to Oklahoma City, then, following the NBA approval referenced in subparagraph (i) above and upon request of the owner of the new NBA team to be located in Seattle, it will transfer at no cost all right, title and interest in the Intellectual Property to such new owner, such rights being subject to NBA rules, agreements, and approvals. PBC further agrees that if an expansion team is approved by the NBA within the next five years to play in a renovated KeyArena, then the owner of such team and the PBC are each free to use and refer to the Sonics' history (e.g., statistics, player histories and records) during the NBA seasons prior to the date of this MOU that the Sonics played in Seattle. PBC further agrees, to the extent requested by a new Seattle team owner, it will transfer at no cost the team's banners, trophies and retired jerseys to such owner, provided that such owner acknowledges that the memorabilia relates to a "shared history" between PBC and the team and that PBC retains the right to create and display duplicate copies of such memorabilia. The trophies, banners, and retired jerseys, together with other memorabilia identified by the City and acceptable to PBC, will remain in Seattle in the custody of the Museum of History and Industry or such other custodian acceptable to the parties. PBC will negotiate and enter into a curatorial agreement with MOHAI acceptable to the City providing for the safe keeping of such memorabilia, access for duplication by PBC, and periodic display in Oklahoma City at the request of PBC or in Seattle at the request of the City.

7. Security. The parties will address to their reasonable mutual satisfaction the provision of security for their respective financial obligations under this Agreement. The City agrees not to require personal guarantees from PBC owners to satisfy this obligation.

8. Transition. The parties will cooperate with each other in good faith to effect an orderly transition of the franchise from Seattle to Oklahoma City, including, without limitation, in selecting a replacement concessions provider for Key Arena and renegotiating the Key Arena suite licenses and PBC's sponsorship agreements. In cooperating, the City shall incur no new or additional liability for any outstanding PBC obligations as a result of this MOU.

9. Terms of Settlement Agreement. The parties agree that, in addition to the terms described herein, the definitive Settlement Agreement will contain terms and conditions as are considered customary for an agreement of this type, including, without limitation, representations and warranties, indemnifications and releases.

10. Disputes. All disputes between the parties related to the terms of this MOU and the terms of the final Settlement Agreement implementing this MOU will be subject to binding arbitration in Seattle by an arbitrator mutually selected by the parties. If the parties are unable to agree on an arbitrator, then one will be designated by US District Court Judge Marsha Pechman.
11. Attorney's Fees. Each side will be responsible for its own fees and costs incurred in the Lawsuit.
12. Press Releases. Each of the parties will cooperate with regard to timing and content of public statements regarding this MOU. The parties agree that neither party will disparage the other party's name and reputation or the names and reputation of any of its officers, employees, representatives or affiliates in discussing the Lease litigation or its resolution.
13. Confidentiality. The parties agree that all settlement discussions and draft settlement agreements (including draft Memorandum of Understandings) are and shall remain confidential and are not subject to any disclosure to any third party except to the extent required by law.
14. Successors and Assigns. This MOU and the Settlement Agreement contemplated herein shall be binding on any successors in interest to PBC.
15. Notification to Court. Upon execution of this MOU the parties will jointly notify the Court that a settlement has been reached, and jointly request the Court refrain from making any further rulings in the Lawsuit pending the anticipated Dismissal with Prejudice of the Lawsuit, either concurrently with execution of the Settlement Agreement or following failure of the Seattle City Council to approve the ordinance described in Paragraph 5.
16. Representations. Each of the parties represents that (a) it has all requisite power and authority to enter into, deliver and carry out its obligations pursuant to this MOU; (b) subject to the City Council approval described in Paragraph 5, the execution, delivery and performance this MOU have been duly authorized by any and all requisite action by such party and any and all requisite approvals have been obtained; and (c) this MOU constitutes a legal, valid and binding obligation of such party which is enforceable against such party in accordance with its terms.
17. City Involvement in Pending Litigation. With respect to the pending litigation between the franchise's former owners and PBC, the City agrees to remain neutral in the litigation. In addition, the City and its agents shall not communicate with PBC or its agents or the plaintiff or its agents regarding the issues in that lawsuit except as required by compulsion of law; provided that this agreement shall not impact the terms of the protective order granted by the court in connection with the Lawsuit.
18. Miscellaneous. Any provision of this MOU may be amended or waived only by a writing signed by each of the parties hereto. No party to this MOU may assign any of its rights or obligations under this MOU without the prior written consent of the other party hereto. This MOU contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters. Nothing in this MOU, express or implied, is intended to confer upon any person or



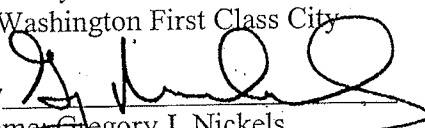
entity other than the parties hereto, or their successors or permitted assigns, any rights or remedies under or by reason of this MOU. This MOU and any amendments hereto may be executed in one or more counterparts, each of which shall be deemed to be an original by the party executing such counterpart, but all of which shall be considered one and the same instrument. This MOU will be governed by and construed in accordance with the domestic laws of the State of Washington, without giving effect to any choice of law or conflict provision or rule that would cause the laws of any other jurisdiction to be applied.

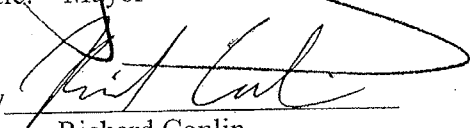
Consented and Agreed to:

The Professional Basketball Club, LLC,  
a Oklahoma limited liability company

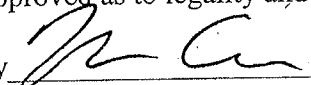
By \_\_\_\_\_  
Name: Clayton I. Bennett  
Title: Chairman

The City of Seattle,  
a Washington First Class City

By   
Name: Gregory J. Nickels  
Title: Mayor

By   
Name: Richard Conlin  
Title: President of City Council

Approved as to legality and form:

By   
Name: Thomas A. Carr  
Title: City Attorney





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Consented and Agreed to:

The Professional Basketball Club, LLC,  
a Oklahoma limited liability company

By C. L. Bennett  
Name: Clayton L. Bennett  
Title: Chairman

The City of Seattle,  
a Washington First Class City

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to legality and form:

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_





**Richard Conlin**  
Seattle City Council President

July 2, 2008

Honorable Gregory Nickels  
Mayor, City of Seattle  
Seattle City Hall  
Seattle WA 98104-1858

Re: *Settlement of City of Seattle v. The Professional Basketball Club, LLC*, No CO7-1620MJP

Dear Mayor Nickels:

City Attorney Thomas Carr has informed each of the undersigned members of the Seattle City Council of the terms of the Memorandum of Understanding agreed to by the City of Seattle and the Professional Basketball Club, LLC. Each of the undersigned members of the Council supports the City's decision to settle the dispute according to the terms of the Memorandum of Understanding, and to move for dismissal of the lawsuit once the settlement becomes final.

Sincerely,

Richard Conlin  
  
Bruce Q. Hannell

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City Hall 600 Fourth Avenue, Floor 2, PO Box 34025, Seattle, WA 98124-4025  
(206) 684-8805, Fax: (206) 684-8587, TTY: (206) 233-0025

E-Mail Address: [richard.conlin@seattle.gov](mailto:richard.conlin@seattle.gov)

Internet Address: <http://www.cityofseattle.net/council/conlin/>

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**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>DOF Analyst/Phone:</b>
Law	Thomas A. Carr/4-8288	

**Legislation Title:**

AN ORDINANCE relating to the Premises Use and Occupancy Agreement between the City of Seattle and the Professional Basketball Club, LLC: approving termination of the Agreement in accordance with the Professional Basketball Club, LLC and City of Seattle Settlement Agreement Memorandum of Understanding; and repealing Ordinance No. 122492.

- **Summary of the Legislation:** This legislation is necessary to complete the settlement of the litigation between the City of Seattle and Professional Basketball Club, LLC. It approves termination of the Key Arena lease under terms set forth in the Settlement Agreement Memorandum of Understanding
- **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):* This legislation is necessary, because the original Key Arena lease was adopted by ordinance. This ordinance supersedes the original ordinance.
- *Please check one of the following:*

  x   **This legislation does not have any financial implications.** *(Stop here and delete the remainder of this document prior to saving and printing.)*

       **This legislation has financial implications.** *(Please complete all relevant sections that follow.)*



# Seattle City Attorney

Thomas A. Carr

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July 2, 2008

Honorable Richard Conlin  
President, Seattle City Council  
Seattle City Hall  
Seattle, WA 98124

**Re: Sonics Ordinance**

Dear Richard:

As we discussed yesterday, I am forwarding an ordinance that relates to the settlement agreement between the City and the Professional Basketball Club thus repealing the prior Ordinance No 122492.

Please feel free to contact me if you have any other questions.

Very truly yours,

Thomas A. Carr  
Seattle City Attorney

cc: Honorable Gregory J. Nickels, Mayor



## ORDINANCE \_\_\_\_\_

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Section 3. Ordinance 122492 is hereby repealed.

Section 4. Any acts pursuant to the authority and prior to the effective date of this ordinance are hereby ratified and confirmed.

Section 5. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, and signed by me in open session in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_.





\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

Approved by me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Gregory J. Nickels, Mayor

Filed by me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
City Clerk

(Seal)

